REMARKS

I.

Favorable reconsideration of this application in view of the following remarks is respectfully requested.

Claims 39-43 and 48-51 are presently active in the application. Claims 44-47 and 52-93 have been withdrawn from consideration.

Applicants note with appreciation the examiner's acknowledgement and consideration of the references cited in the information disclosure statement filed August 9, 2001.

II.

Claims 40-41 and 50-51 stand rejected under 35 USC 102(b) as being anticipated by Canto (WO 98/57611). This rejection is respectfully traversed.

Claim 40 recites "a pivotal-position-detecting sensor configured to detect that the supporting arm has reached a prescribed range of pivotal positions." As shown in Figs. 1 and 2 of the present application, the supporting arm 26 is normally biased into the position a by the spring 55. However, as shown in Fig. 8, when a user is seated in the chair 4 the user's back pivots the supporting arm 26 counterclockwise to the position b shown in Fig. 1 as the supporting arm moves from a lower limit stop S2 toward an upper limit stop S1. When the supporting arm 26 reaches the user's shoulder the supporting arm rotates counterclockwise as shown by the arrow c illustrated in Fig. 1. The pivotal-position-detecting sensor 60 illustrated in Figs. 1 and 2 comprises a light emitting element 57 and light detecting element 58. When the supporting arm 26 is in the position b indicated by the dashed lines, the light detecting element 58 can detect the light from the light emitting element 57. However, when the supporting arm 26 rotates to the position a illustrated by the solid lines in Fig. 1, a portion of the supporting arm 26 blocks the path between the light emitting element 57 and the light

detecting element 58 thereby indicating that the supporting arm 26 has reached the wearer's shoulder as indicated in Fig. 8. See page 58 line 7-page 61 line 12.

Canto fails to disclose the subject matter defined by claim 40. As shown, for example, in Fig. 3 of Canto, the supporting arm that supports the therapeutic members 6 or 15 illustrated, for example, in Fig. 1 of Canto does not have a reference number and in fact is not mentioned in Canto. The sensor 17 relied upon in the Office Action as the pivotal-position-detecting sensor is only vaguely described in Canto. However, it clearly does not detect any pivotal position of the supporting arm connecting the therapeutic members 6 or 15. At most, the sensor 17 detects the angular position of the associated shaft 2 or 11 with respect to the axis of rotation of the motors 1 or 10. However, there is no disclosure in Canto to support the assertion in the Office Action that the sensor 17 is somehow configured to detect when a supporting arm has reached a prescribed range of pivotal positions as set forth in claim 40. The sensor 17 disclosed by Canto is mounted on the shaft of the motor 1 or 10, whereas the unnumbered supporting arms carrying the therapeutic members 6 or15 disclosed by Canto are mounted on the shafts 2 or 11. There is no correlation between sensors 17 and the pivotal position of the supporting arms carrying the therapeutic members 6 or 15 disclosed by Canto. Thus, there is no express or inherent teaching in Canto of the subject matter defined by Claim 40.

Claim 41 is similar to claim 40, and it patentably distinguishes over the applied reference for the reasons stated above with respect to claim 40. Moreover, claim 41 defines the sensor in a means plus function format pursuant to 35 USC 112, 6th paragraph. Clearly, the sensor 17 disclosed in Canto is not the equivalent of the sensor 60 disclosed in the present application. Thus, the applied reference fails to anticipate the subject matter defined by claim 41 for this additional reason.

Accordingly, applicants respectfully request that the rejection of claims 40 and 41 under 35 USC 102 (b) be withdrawn.

Claim 50 depends from claim 40. Therefore, claim 50 patentably distinguishes over the applied reference for the reasons stated above with respect to claim 40.

Claim 51 depends from claim 41. Accordingly, claim 51 patentably distinguishes over the applied reference for the reasons stated above with respect to claim 41.

III.

Claim 42 stands rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as obvious over Canto '611 in view of Otuka et al. (U.S. patent No. 4,576,149). This rejection is respectfully traversed.

Claim 42 recites "a sensor configured to detect a position of a specific portion of the body of the user with respect to the massaging apparatus by determining a vertical position of the supporting arm at a moment when a pivotal position of the supporting arm has reached a prescribed range." The sensor disclosed by Canto, as noted above, does not sense a pivotal position of the supporting arm. Therefore, it clearly does not teach or suggest the subject matter defined by claim 42 wherein the sensor is configured to detect when a pivotal position of the supporting arm has reached a prescribed range. Otuka et al., fails to make up for the deficiencies in Canto. The detector 61 disclosed by Otuka et al. merely senses the vertical position of the massaging elements 18 and 18a as shown in Fig. 6 and described in column 6 lines 31-38. There is no teaching or suggestion in Otuka et al. of sensing the position of a supporting arm as set forth in claim 42. Moreover, it is only through the improper use of hindsight using applicants' disclosure as a template that one having ordinary skill in the art would attempt to combine the teachings of the applied references in the manner proposed in the Office Action. In addition, even if the sensor 61 disclosed by Otuka et al. could some how be substituted for the sensor 17 disclosed by Canto, the structure defined by claim 42

still would not be met by the formed reference device. Further, because the applied references do not teach or suggest a sensor configured to detect a pivotal position of a supporting arm, they even more clearly do not teach or suggest a sensor configured to detect a relationship between a vertical position of the supporting arm and a pivotal position of the supporting arm as set forth in claim 42. Accordingly, applicants respectfully request that the rejection of claim 42 under 35 USC 102(b) or 103 be withdrawn.

IV.

Claim 39 stands rejected under 35 USC 103(a) as being unpatentable over Canto '611 in view of Otuka et al. (U.S. patent No. 4,576,149). This rejection is respectfully traversed.

Claim 39 recites "a sensor configured to detect a position of a specific portion of the user with respect to the massaging apparatus by determining a relationship between a vertical position of the supporting arm and a pivotal position of the supporting arm." As noted above with respect to claim 42, neither Canto nor Otuka et al. teaches or suggests a sensor configured to detect a pivotal position of a supporting arm let alone a vertical position of the supporting arm and a pivotal position of the supporting arm Thus, claim 39 patentably distinguishes over the applied references for the reasons stated above with respect to claim 42. Accordingly, whether taken alone, or in any proper combination, the applied references fail to teach or suggest the subject matter defined by claim 39.

Claims 48 and 49 are referred to in paragraph numbered 7 on page 5 of the Office Action and claim 43 is referred to in paragraph numbered 8 on page 5 of the Office Action. However, claims 43, 48, and 49 have not been included in any specific rejection. Accordingly, applicants respectfully request that the examiner indicate that those claims are allowable in the next Office Action.

Claims 43, 48, and 49 depend from claims 40, 39, and 42, respectively, and they patentably distinguish over the applied references for the reasons stated above with respect to their respective parent claims.

Claim 48 depends from claim 39 and further recites "wherein the sensor configured to detect the position of the specific portion of the body of the user to be determined detects a position of a shoulder of the body of the user." Contrary to the Office Action's assertion, there is no teaching or suggestion in Canto of a sensor that detects the position of a user's shoulder.

Claim 49 depends from claim 42 and further recites "wherein the sensor configured to detect the position of the specific portion of the body of the user to be determined detects a position of a shoulder of the body of the user." Again, there is no teaching or suggestion in Canto of a sensor that detects the position of the user's shoulder.

Claim 43 depends from claim 40 and further recites "wherein the pivotal-position-detecting sensor comprises an optical sensor having a light emitting element and a light receiving element, and whether or not the supporting arm has reached the prescribed range of pivotal movement is detected by determining if light from the light emitting element has been received by the light receiving element." As noted above, neither Canto nor Otuka et al. teaches nor suggests a sensor for sensing the pivotal position of a supporting arm as set forth in claims 40 and 43. Accordingly, the subject matter in claim 43 is clearly not taught or suggested by Otuka et al. as implied in the Office Action. Moreover, as noted above, it is only through the improper use of hindsight that one having ordinary skill in the art would attempt to combine the teachings of the applied references to arrive at the subject matter defined by claim 43. In addition, even if the references could be properly combined, the subject matter defined by claim 43 would not be met by the formed reference device.

V.

For the reasons stated above, applicants respectfully request favorable reconsideration and allowance of claims 39-43, and 48-51.

Respectfully submitted,

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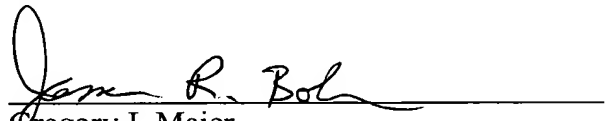

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